IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1118 OF 2004

Shri Jaganath Shankar Pawar and ors. ..Petitioners

Vs.

Shri Pandurang Ananta Khasnis and ors. ..Respondents

Mr. P.B. Shah for petitioners.
Ms. Pritum Tendulkar and M.S. Karnik for respondent nos.1 to 10.
Mr. A.P. Kulkarni for respondent nos.11 and 12.

CORAM: B.H. MARLAPALLE, J.

Date : July 26, 2006.

P.C.:

1. Heard Mr. Shah the learned counsel for the petitioners who had filed Special Civil Suit No.161 of 1997 before the learned Civil Judge, Senior Division at Baramati. The plaintiffs filed a withdrawal pursis on 29/3/2001 stating that they were not inclined to proceed with the suit and, therefore, they were withdrawing the suit unconditionally. They prayed that the suit be disposed for want of prosecution. The learned Judge of the trial court allowed this pursis and disposed the suit for want of prosecution.

2. About 15 months later i.e. on 13/6/2002 the petitioners presented an application and it was registered as Misc. Civil Application No.39 of 2002 before the same court. In that application the petitioners prayed for permission to be granted to withdraw the pursis filed on 29/3/2001 and this application has been rejected by the court below on 5/12/2003. Hence this petition.

3. The trial court noted that the allegations regarding pressure to withdraw the suit and thus to file withdrawal pursis were not supported even prima facie from the record and the pursis clearly stated that the suit was being withdrawn unconditionally. The so called compromise between the parties also does not find mention in the pursis dated 29/3/2001. Mr.Shah the learned counsel for the petitioners submitted that the cash amount was received but some plots of land were not allotted by the respondents and, therefore, the pursis was sought to be withdrawn. Undoubtedly, on 29/3/2001 itself the pursis was allowed and the suit was disposed for want of prosecution. The restoration application made with leave to withdraw the pursis is based on some

purported settlement and the breach of the respondents in maintaining terms of the settlement. Having regards to the statements made in the pursis, it cannot be said that the trial court fell in error calling for corrections in this petition under Article 227 of the Constitution.

4. Hence, the petition is rejected summarily.

(B.H. Marlapalle,J.)